

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, APRIL 3, 2006

APPLICATION OF

DELMARVA POWER & LIGHT COMPANY

For an increase in its electric rates pursuant to
Va. Code § 56-249.6 and § 56-582

CASE NO. PUE-2006-00033

APPLICATION OF

DELMARVA POWER & LIGHT COMPANY
and
CONECTIV ENERGY SUPPLY, INC.

CASE NO. PUE-2006-00032

For approval of transactions under Chapter 4
of Title 56 of the Code of Virginia

ORDER FOR NOTICE AND HEARING

This Order establishes a procedural schedule for two filings: one made by the Delmarva Power & Light Company ("Delmarva" or "Company") in Case No. PUE-2006-00033, and the second by Delmarva and its affiliate, Conectiv Energy Supply, Inc. ("CESI"), in Case No. PUE-2006-00032. The two matters were filed with the Clerk of the Commission on March 10, 2006; they will be considered together without consolidation.

In Case No. PUE-2006-00033, Delmarva seeks to increase its fuel factor pursuant to the provisions of §§ 56-249.6 and 56-582 B of the Code of Virginia ("Code") ("Capped Rate Adjustment Application"). Inasmuch as Delmarva currently owns no generation facilities from which to purchase fuel, the Capped Rate Adjustment Application seeks to recover the cost of power Delmarva purchases to serve its retail customers in the Commonwealth. In the Capped Rate Adjustment Application now before this Commission, the purchased power costs in

question are associated with a recent Delmarva bid solicitation for wholesale power supply.

Delmarva's affiliate, CESI, submitted the bid selected by Delmarva.

In Case No. PUE-2006-00032, Delmarva seeks authority from the Commission to enter into this wholesale power supply arrangement with its affiliate, CESI ("Affiliates Act Application"). Such approval is sought by the applicants therein pursuant to the Affiliates Act, Chapter 4 (§ 56-76 *et seq.*) of Title 56 of the Code. Section 56-77 of the Code requires our review of Affiliates Act applications within 60 days of their filing or they are deemed approved. This statute also allows us to extend the review period an additional period not to exceed 30 days. The Commission will address the issues raised in this docket promptly. However, we will by this Order extend the review period for the Affiliates Act Application.

In sum, Delmarva is requesting this Commission to approve an annual rate increase for Delmarva's retail customers in Virginia of approximately \$20 million. As Delmarva acknowledges, this represents a 49.5 % increase above current rates based on the 12 months ended December 31, 2005.

A touchstone of these two dockets is our June 29, 2000, Order in Case Nos. PUE-2000-00086 and PUA-2000-00032 ("Divestiture Order") approving Delmarva's proposed divestiture of its generation assets. That approval was sought by Delmarva as part of a Company-wide restructuring plan involving Delmarva's operations in several states.¹ In the Divestiture Order, the Commission adopted and approved a Memorandum of Agreement ("MOA") between Delmarva and the Staff of this Commission ("Commission Staff" or "Staff").

¹ As detailed in our Divestiture Order, Delmarva's Company-wide restructuring plan encompassed the sale to third parties or transfer to affiliated entities of the Company's interests in its generation facilities—including its coal and nuclear base load generation—virtually all of which were situated outside Virginia. The sole Virginia-based generation facilities transferred pursuant to our Divestiture Order were two Delmarva peaking units located at Bayview and Tasley, Virginia. The Divestiture Order approved their transfer to Delmarva's affiliate, Conectiv Delmarva Generation, Inc.

which the Company proposed to resolve the issues raised by its requested plan of divestiture. Therein, the Company agreed, *inter alia*, that its fuel factor, after being re-set at the time of the Divestiture Order, would remain frozen until January 1, 2004. Following that date (and for the duration of the Company's capped rates under the Virginia Electric Utility Restructuring Act), Delmarva would be eligible to seek changes to its fuel factor pursuant to the terms and conditions set forth in the MOA. Significantly, the MOA required that fuel rates established for Delmarva after January 1, 2004, conform to a "Fuel Index Procedure" that, as declared by its terms, provides "a proxy method for estimating the fuel costs that would have otherwise been incurred absent the sales and transfer of the generating units."

The 2004 Session of the Virginia General Assembly amended § 56-249.6 of the Code to provide that jurisdictional utilities having no generation from which to purchase fuel could nevertheless have a fuel factor to reflect the costs of power purchased to serve Virginia jurisdictional retail customers. A corresponding amendment in the same legislation (Senate Bill 651) amended § 56-582 B (i) to provide that capped rates could be adjusted not only for fuel costs, but for purchased power costs as well—all pursuant to § 56-249.6 "and, if applicable, in accordance with the terms of any Commission order approving the divestiture of generation assets pursuant to § 56-590." Consequently, the terms and conditions of our Divestiture Order (and the MOA setting forth the particulars thereof) are at issue in these pending applications.

In Delmarva's Capped Rate Adjustment Application, calculations performed by the Company show that "Delmarva's costs of purchasing capacity and energy in order to provide service to its Virginia retail customers will be somewhat higher than the calculated power production costs that may have been incurred if Delmarva had continued to own and operate its own generating plants." Capped Rate Adjustment Application at 6. The Company states that

this differential represents "the dynamics of the market," noting that in years previous to 2005, the Fuel Index Procedure yielded costs "substantially above the rate actually included in Delmarva's rates."² In short, the fuel rate proposed by the Company reflects future purchased power costs that exceed those produced by the application of the Fuel Index Procedure. Thus, a significant preliminary question in our consideration of these applications is whether this Commission can approve the purchased power costs proposed to be recovered through the Company's fuel factor consistent with the terms of the MOA and applicable statutory law discussed above.

These questions—the applicability and potential limiting effect of the MOA—are not new ones to this Company or the Commission. In Delmarva's prior fuel factor proceeding,³ we raised those issues for preliminary comment by the Company, interested parties and the Staff in our November 17, 2004, Order for Notice and Hearing, along with other legal issues presented in that case. The responses we received revealed disagreement between the Company and the Staff on these issues. The Company asserted in its December 3, 2004, response⁴ that the Fuel Index Procedure calculations simply provide the basis for the Staff or an intervenor to contend that the Company's purchased power costs are too high. The Staff, on the other hand, stated in its

² *Id.* In its Capped Rate Adjustment Case filing, the Company characterizes calculations under the MOA's Fuel Index Procedure as the "Fuel Index and Proxy Production Function Expense calculation."

³ Application of Delmarva Power & Light Company For an increase in its electric rates pursuant to Va. Code § 56-249.6 and § 56-582, Case No. PUE-2004-00124, considered jointly without consolidation with the Application of Delmarva Power & Light Company and Conectiv Energy Supply, Inc. For approval of transactions under Chapter 4 of Title 56 of the Code of Virginia, Case No. PUE-2004-00125.

⁴ Response of Delmarva Power & Light Company to Five Issues in the Commission's November 17, 2004, Order for Notice and Hearing, filed in Case Nos. PUE-2004-00124 and PUE-2004-00125 on December 3, 2004, at 10, 11.

December 30, 2004, responsive memorandum⁵ that the Fuel Index Procedure yields a baseline calculation that "serves as a check on the Company's purchased power costs." Moreover, the Staff asserted that the Commission could approve a fuel rate for the Company based upon the Fuel Index Procedure calculations instead of the Company's actual purchased power costs.

Ultimately, the necessity of adjudicating the issue of the MOA's applicability at that time was obviated by the simple fact that the Fuel Index Procedure calculations yielded a higher number than the costs associated with the Company's then proposed contract with its affiliate, CESI, for purchased power. However, that adjudication was simply postponed until now inasmuch as the Company acknowledges in its Capped Rate Adjustment Application that the reverse is true at this time, *i.e.*, the number yielded by the Fuel Index Procedure is lower than the costs associated with Delmarva's proposed purchase power agreement with CESI.

Accordingly, while we will in this Order establish a procedural schedule for these matters, we will nevertheless request the Company, interested parties, and the Staff of the Commission to assist this Commission in determining the applicability of the MOA to the matters before us in these two dockets. The resolution of that threshold matter will determine how the Commission may then evaluate the merits of these filings.

NOW THE COMMISSION, having considered the foregoing, finds as follows:

We will direct the Company promptly to address whether, and if so how, the MOA is applicable to the Company's filings in these dockets. Interested parties and the Commission Staff will be provided a similar opportunity following the filing of the Company's memorandum addressing this question. The Company, in turn, will be permitted to reply to any such responses.

⁵ Staff Response to Issues raised by the Commission, filed in Case Nos. PUE-2004-00124 and PUE-2004-00125 on December 30, 2005, at 10, 11.

At the same time, we will schedule a hearing date for these applications and will require the Company to give notice of their pendency. As part of that notice, we will require the Company to advise that the issues identified above will be addressed as a preliminary matter.

Additionally, we will in this Order establish deadlines for parties to file Notices of Participation, together with deadlines for (i) comments from interested persons, (ii) pre-filed testimony from respondents and the Commission Staff, and (iii) rebuttal testimony from the Company.

Accordingly, IT IS ORDERED THAT:

(1) The two filings are docketed as Case Nos. PUE-2006-00033 (Capped Rate Adjustment Application) and PUE-2006-00032 (Affiliates Act Application). They will be considered together without consolidation.

(2) The period for Commission review of PUE-2006-00032 (Affiliates Act Application) is hereby extended for an additional thirty days pursuant to our authority in § 56-77 of the Code.

(3) On or before April 18, 2006, the Company shall file a legal memorandum addressing the applicability of the MOA to the dockets before us. Persons participating as respondents in this matter may file legal memoranda concerning that issue on or before April 25, 2006; the Commission Staff may also file a legal memorandum concerning such issue on or before April 25, 2006. The Company may file a legal memorandum in reply to the filings of respondents and the Commission Staff on or before May 2, 2006.

(4) A public hearing shall be convened on May 16, 2006, at 10:00 a.m. in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia, to receive comments from members of the public and to receive evidence on the

applications. Any person not participating as a respondent may give oral testimony concerning these applications as a public witness at the hearing. Public witnesses desiring to make statements at the public hearing concerning these applications need only appear in the Commission's second floor courtroom in the Tyler Building at the address set forth above prior to 10:00 a.m. on the day of the hearing and sign up to speak.

(5) The Company shall forthwith make copies of its applications, prefiled testimony, and exhibits available for public inspection during regular business hours at all Company offices in Virginia where customer bills may be paid. Interested persons may also review copies of Delmarva's applications in the Commission's Document Control Center, located in the First Floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia between the hours of 8:15 a.m. and 5:00 p.m. Monday through Friday. Interested persons may also access unofficial copies of these applications through the Commission's Docket Search portal at <http://www.scc.virginia.gov/caseinfo.htm>. A copy of either, or both, of the Company's applications may also be obtained by requesting a copy of the same from counsel for Delmarva: Richard D. Gary, Esquire, Hunton & Williams, LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23218-4074. Delmarva shall make copies available on an electronic basis upon request.

(6) On or before April 15, 2006, the Company shall cause a copy of the following notice to be published as display advertising (not classified) on one occasion in newspapers of general circulation throughout its service territory:

NOTICE TO THE PUBLIC OF APPLICATIONS BY
DELMARVA POWER & LIGHT COMPANY FOR INCREASES
IN ITS ELECTRIC RATES PURSUANT TO § 56-249.6 AND
§ 56-582 OF THE CODE OF VIRGINIA AND FOR APPROVAL
OF TRANSACTIONS UNDER CHAPTER 4 OF TITLE 56 OF
THE CODE OF VIRGINIA
CASE NOS. PUE-2006-00033 AND PUE-2006-00032

On March 10, 2006, Delmarva Power & Light Company ("Delmarva" or "Company") filed, pursuant to the provisions of §§ 56-249.6 and 56-582 of the Code of Virginia ("Code"), an application with the State Corporation Commission ("Commission") seeking to make changes to certain components of its capped rates for electric service to its retail customers in Virginia. This is Case No. PUE-2006-00033.

On the same date, Delmarva and its affiliate, Conectiv Energy Supply, Inc. ("CESI") filed, pursuant to the provisions of Chapter 4 of Title 56 of the Code, an application seeking approval of a transaction between affiliates, whereby CESI will sell and Delmarva will purchase wholesale electric power for delivery by Delmarva to its retail customers in Virginia. This is Case No. PUE-2006-00032.

The rate increases proposed by Delmarva in Case No. PUE-2006-00033 include the increased price for the wholesale electric power proposed to be purchased by Delmarva from CESI, in the approximate annual amount of \$20 million, a 49.5% increase above current rates.

The Commission has issued its Order for Notice and Hearing ("Order") that directs Delmarva, and permits respondents and the Commission Staff, to file legal memoranda on the question of the applicability of a Memorandum of Agreement between the Company and the Commission Staff, approved by the Commission in a previous case, to the rate changes sought in by the Company in these dockets.

Persons participating as respondents and desiring to provide legal memoranda on this question shall file an original and fifteen (15) copies of such memoranda, on or before April 25, 2006, with the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, and shall refer to Case Nos. PUE-2006-00033 and PUE-2006-00032. At the same time a copy of any comment or memoranda shall be served on counsel for Delmarva, Richard D. Gary, Esquire, Hunton &

Williams, LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23218-4074.

The Order also sets the applications for public hearing, beginning at 10:00 a.m., on May 16, 2006, in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia. Any person not participating as a respondent may give testimony concerning the applications as a public witness by appearing at the hearing and signing up to speak. Members of the public may also file an original and fifteen (15) copies of written comments on the applications on or before April 25, 2006, with the Clerk of the Commission and at the same time serve a copy to counsel for Delmarva at the address listed above.

The Order establishes dates for persons interested in participating as respondents to file notices of participation, for the filing of testimony by Delmarva, respondents and the Commission Staff, and procedures for discovery. Persons desiring to participate as respondents should obtain a copy of the Order from the Commission's web address: <http://www.scc.virginia.gov/caseinfo.htm> and follow the instructions set out therein.

Copies of the applications are available for public inspection at Delmarva's business offices in the Commonwealth, during regular business hours at the Commission's Document Control Center, First Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia, or may be obtained at no charge by written request to counsel for Delmarva at the address listed above. Unofficial copies of the applications may be reviewed at the Commission's website at the web address listed above.

DELMARVA POWER & LIGHT COMPANY

(7) On or before April 25, 2006, any person desiring to participate in either or both of these proceedings as a respondent shall file with the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, an original and fifteen (15) copies of a notice of participation as a respondent, and shall simultaneously serve a copy of the notice of participation on the counsel to the Company: Richard D. Gary, Esquire, Hunton & Williams, LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23218-4074. Pursuant to 5 VAC 5-20-80 B of the Commission's Rules of Practice and Procedure, any

notice of participation shall set forth (i) a precise statement of the interest of the respondent, (ii) a statement of the specific action sought to the extent then known, and (iii) the factual and legal basis for the action.

(8) Within five (5) business days of receipt of a notice of participation as a respondent, the Company shall serve upon each respondent a copy of this Order, a copy of the application, and all materials filed with the Commission, unless these materials have already been provided to the respondent.

(9) On or before April 25, 2006, each respondent may file with the Clerk of the Commission, an original and fifteen (15) copies of any testimony and exhibits it expects to offer at the hearing and shall serve copies of the testimony and exhibits on counsel to Delmarva and on all other respondents.

(10) On or before April 25, 2006, interested persons wishing to comment on either, or both, of the Company's applications may file an original and fifteen (15) copies of written comments concerning such applications with the Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, and shall refer to Case Nos. Case Nos. PUE-2006-00032 and PUE-2006-00033 in any such comments. A copy of such comments shall simultaneously be sent to counsel for Delmarva: Richard D. Gary, Esquire, Hunton & Williams, LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23218-4074. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website:

<http://www.scc.virginia.gov/caseinfo.htm>.

(11) The Commission Staff shall investigate the reasonableness of the Company's applications herein. On or before April 25, 2006, the Staff shall file with the Clerk of the

Commission an original and fifteen (15) copies of the Staff's testimony and exhibits concerning these applications, and shall promptly serve a copy on counsel to the Company and all respondents.

(12) On or before May 2, 2006, Delmarva shall file with the Clerk of the Commission an original and fifteen (15) copies of any rebuttal testimony that the Company expects to offer in rebuttal to the testimony and exhibits of the respondents and the Commission Staff, and shall on the same day serve one copy on Staff and all respondents.

(13) On or before April 11, 2006, the Company shall serve a copy of this Order on the Chairman of the Board of Supervisors and county attorney of each county and upon the mayor or manager of every city and town (or upon equivalent officials in counties, towns and cities having alternate forms of government) in which the Company provides service. Service shall be made by first-class mail to the customary place of business or residence of the person served.

(14) At the commencement of the hearing scheduled herein, the Company shall provide proof of service and notice as required in this Order.

(15) The Company and respondents shall respond to written interrogatories within five (5) calendar days after receipt of the same. Except as modified herein, discovery shall be in accordance with Part IV of the Commission's Rules of Practice and Procedure.

(16) *This matter is continued for further orders of the Commission.*

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to:

Richard D. Gary, Esquire, Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074; Randall V. Griffin, Esquire, and I. David Rosenstein, Esquire, Delmarva Power & Light Company, P.O. Box 231, Wilmington, Delaware 19899; C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer

Counsel, Office of Attorney General, 900 East Main Street, 2nd Floor, Richmond, Virginia
23219; and the Commission's Office of General Counsel and Division(s) of Energy Regulation,
Economics and Finance and Public Utility Accounting.